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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 354

CARL E. BROWN and PAUL C. BROWN, a co-partnership, and CALIFORNIA COMPENSATION INSURANCE COMPANY, *Petitioners,*

v.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, LIPSMAN-FULKERSON & Co., a corporation, AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, a corporation, and PAUL C. BROWN, *Respondents.*

BRIEF FOR RESPONDENT AMERICAN MUTUAL LIABILITY INSURANCE COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

SUBJECT INDEX

	Page
Statement as to Jurisdiction	2
Question Presented	2
Summary of Argument	2
Argument	2
I. The right of appeal or review is not essential to due process	3
II. The Fourteenth Amendment does not control forms of procedure or regulate practice in state courts	4
III. There is no showing of discrimination on the part of the District Court of Appeal of the State of California in its method of handling appeals from the decisions of respondent commission	5
Conclusion	7

TABLE OF CASES

Dohany v. Rogers, 281 U. S. 362; 74 L. Ed. 904	4
Dowd v. United States, 340 U. S. 206; 95 L. Ed. 215	5, 6
Louisville and Nashville R. R. Co. v. Schmidt, 177 U. S. 230, 44 L. Ed. 747	4
Napa Valley Electric Co. v. Bd. of Railroad Commissioners of California, 251 U. S. 366; 64 L. Ed. 310.	5
Pittsburgh etc. Railway Co. v. Backus, 154 U. S. 421; 38 L. Ed. 1031	5
Reetz v. Michigan, 188 U. S. 505; 47 L. Ed. 563	3
State of Ohio v. Akron Metropolitan Pack District, 281 U. S. 74; 74 L. Ed. 710	3

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Comes now the Respondent American Mutual Liability Insurance Company and respectfully submits its brief in opposition to the Petition for Writ of Certiorari filed by Petitioners Carl E. Brown and Paul C. Brown, a co-partnership, and California Compensation Insurance Company.

The question presented is whether the denial by the District Court of Appeal of the State of California of a Petition for Review of a decision of the Industrial Accident Commission of the State of California by minute order without written opinion deprive the Petitioner of due process and equal protection of law under the Fourteenth Amendment of the Constitution of the United States.

Jurisdiction

The jurisdiction of this Court is invoked by Petitioner under Title 28, Section 1257 (3) U. S. Code.

Statement of Case

This respondent adopts the statement of the case contained in the brief of the Respondent, Industrial Accident Commission of the State of California.

Summary of Argument

1. The right of appeal or review is not essential to due process.

2. The Fourteenth Amendment to the Constitution of the United States does not control forms of procedure or regulate practice in State Courts.

3. There is no showing of discriminatory practice by the District Court of Appeal of the State of California in its method of consideration and disallowance of the Petition for Writ of Review.

ARGUMENT

This Respondent adopts the Argument contained in the Brief filed by the Respondent, Industrial Accident Commission of the State of California and in addition thereto respectfully submits the following:

I.

The Right of Appeal or Review Is Not Essential to Due Process

This Honorable Court has held on numerous occasions that the right of appeal or review need not be provided by the various states in order that due process be accorded.

In the case of *Reetz* v. *Michigan*, 188 U. S. 505, this Court said:

> "Neither is the right of appeal essential to due process of law. In nearly every State are statutes giving, in criminal cases of a minor nature, a single trial, without any right of review. For nearly a century trials under the Federal practice for even the gravest offenses ended in the Trial Court, except in cases where two judges were present and certified a question of law to this Court. In civil cases a common rule is that the amount in controversy limits the entire litigation to one Court, yet there was never any serious question that in these cases due process of law was granted." (Quoted from page 508 of the opinion)

The Court restated this principle in the case of *State of Ohio* v. *Akron Metropolitan Park District*, 281 U. S. 74 where the Court said:

> "As to the due process clause of the Fourteenth Amendment, it is sufficient to say that, as frequently determined by this Court, the right of appeal is not essential to due process, provided that due process has already been accorded in the tribunal of first instance. McKane v. Durstin, 153 U. S. 684, 687; Pittsburgh etc. Railway Co. v. Backus, 154 U. S. 421, 427; Reetz v. Michigan, 188 U. S. 505, 508; Rogers v. Peck, 199 U. S. 425, 435; Standard Oil Company of Indiana v. State of Missouri, 224 U. S. 270, 286. (Page 80 of the opinion)

II.

The Fourteenth Amendment to the Constitution of the United States Does Not Control Forms of Procedure or Regulate Practice in State Courts

Contrary to Petitioners contention, the fact that the District Court of Appeal of California did not write an opinion when denying the petition for Writ of Review is not a violation of the Fourteenth Amendment to the Constitution of the United States.

This Honorable Court stated in the case of *Louisville and Nashville R. R. Co.* v. *Schmidt*, 177 U. S. 230:

> "It is no longer open to contention that the due process clause of the Fourteenth Amendment to the Constitution of the United States does not control mere forms of procedure in State Courts or regulate practice therein." (Quoted from page 236 of the opinion)

This principle was reaffirmed in the case of *Dohany* v. *Rogers*, 281 U. S. 362 where the Court said:

> "The due process clause does not guarantee to the citizen of a state any particluar form or method of state procedure. Under it he may neither claim a right to trial by jury nor a right of appeal. Its requirements are satisfied if he has reasonable notice and reasonable opportunity to be heard and to present his claim or defense, due regard being had to the nature of the proceeding and the character of the rights which may be affected by it. Reetz v. Michigan, 188 U. S. 505, 508, 47 L. ed. 563, 566, 23 Sup. Ct. Rep. 390; Missouri ex rel. Hurwitz v. North, 271 U. S. 40, 70 L. ed. 818, 46 Sup. Ct. Rep. 384; Bauman v. Ross, 167 U. S. 548, 593, 42 L. ed. 270, 289, 17 Sup. Ct. Rep. 966; A. Backus, Jr. & Sons v. Fort Street Union Depot Co., 169 U. S. 569, 42 L. ed. 859, Sup. Ct. Rep. 445. 74 L. ed. 912.
> Nor does the equal protection clause exact uniformity of procedure. The legislature may classify litigation and adopt one type of procedure for one class and a different type for another." (Quoted from page 369 of the opinion)

Moreover, this Court has approved the procedure of which Petitioner complains in the case of *Napa Valley Electric Co.* v. *Bd. of Railroad Commissioners of California*, 251 U. S. 366. In this case the Court stated:

> "The Court held, and we concur, that absence of an opinion by the Supreme Court did not affect the quality of its decision or detract from its efficacy as a judgment upon the questions presented, and its subsequent conclusive effect upon the rights of the Electric Company." (Page 373 of the opinion)

This Court also said in *Pittsburgh etc. Railway Company* v. *Backus*, 154 U. S. 421:

> "Equally fallacious is the contention that, because to the ordinary taxpayer there is allowed not merely one hearing before the county officials, but also a right of appeal with a second hearing before the State Board, while only the one hearing before the latter Board is given railroad companies in respect to their property, therefore, the latter are denied the equal protection of the laws. If a single hearing is not due process, doubling it will not make it so." (P. 427)

III.

There Is No Showing of Discrimination on the Part of the District Court of Appeal of the State of California in Its Method of Handling Appeals From Decisions of Respondent Commission

While it is true that a discriminatory denial of the statutory right of appeal is a violation of the equal protection clause of the Fourteenth Amendment and this Court has so held in the case of *Dowd* v. *United States of America*, 340 U. S. 206; 95 L. Ed. 215, there is no evidence of discrimination in the instant case so as to bring it within the rule laid down by this court in the decision referred to above.

In the *Dowd* case *supra,* the petitioner was prevented from following the statutory procedure necessary to perfect an appeal.

In the instant case there is no such showing of discrimination, and as a matter of fact the only assertion petitioner makes in this connection is the broad statement that "only about one-fifth of the commisson's decisions in which review is sought are actually *subject to* review." (Underscoring supplied)

The truth of the matter is that all such decisions are *subject to* review depending upon the petitioner's ability to demonstrate in his Petition for Writ of Review, sufficient grounds for the granting thereof. The record clearly indicates that the District Court of Appeal of the State of California followed the form of procedure as established by the State Constitution in the consideration and disallowance of the petition for writ of review.

If it is a fact that only twenty per-cent of the Petitions for Writ of Review from the decisions of the Industrial Commission of the State of California are allowed, this fact of itself, without further showing would not constitute a violation of the Fourteenth Amendment. The fallacy of petitioner's argument is apparent when the question is asked "What percentage of such petitions must be allowed by the District Courts of Appeal in order that discrimination may no longer be claimed?" For example, let us say that eighty per-cent are allowed and twenty per-cent disallowed. Then those among the twenty per-cent, being a minority group, might claim discrimination. Obviously, the point cannot be effectively argued on a percentage basis.

The Petition of Writ of Review creates a situation similar to that which exists when a Petition for Writ of Certiorari is filed in this Honorable Court.

Certainly there is no lack of due process because this Honorable Court does not allow all of the Petitions for

Writ of Certiorari filed with it or if the percentages show that it allows twenty per-cent, or any other percentage, of the Petitions filed.

Conclusion

The action taken on Petitioners' petition for writ of review by the District Court of Appeal of the State of California was in conformance with the provisions of the Constitution of that State relating to the forms of procedure and practice in such matters. The applicable sections of the California Constitution and California Labor Code provide petitioners and the citizens of the State of California with full and equal protection and due process and there has been no violation of petitioners' rights under the Fourteenth Amendment of the Constitution of the United States.

For the foregoing reasons it is respectfully submitted that the Petition for Writ of Certiorari be denied.

Respectfully submitted

CHARLES C. COLLINS
Attorney for Respondent
American Mutual Liability
Insurance Company